

#### § 1151.4

necessary for the interchange of traffic shall be limited to the closest point to the junction with the owning railroad's line that allows the efficient interchange of traffic. A statement shall be included that the applicant agrees to have its train and crew personnel take the operating rules examination of the railroad over which the operating rights are exercised.

(14) If applicant requests Board prescribed joint rates and divisions in the feeder line proceeding, a description of any joint rate and division agreement that must be established. The description must contain the following information:

- (i) The railroad(s) involved;
- (ii) The estimated revenues that will result from the division(s);
- (iii) The total costs of operating the line segment purchased (including any trackage rights fees).
- (iv) Information sufficient to allow the Board to determine that the line sought to be acquired carried less than 3 million gross ton-miles of traffic per mile in the preceding calendar year<sup>1</sup>; and
- (v) Any other pertinent information.

(15) The extent to which the owning railroad's employees who normally service the line will be used.

(16) A certificate stating that the service requirements of § 1151.2(a) have been met.

(b) Applicant must make copies of the application available to interested parties upon request.

[48 FR 9654, Mar. 8, 1983, as amended at 56 FR 37862, Aug. 9, 1991; 64 FR 53268, Oct. 1, 1999]

#### § 1151.4 Board determination.

(a) The Board shall determine whether each applicant is a financially responsible person. To be a financially responsible person, the Board must find that:

- (1) The applicant is capable of paying the constitutional minimum value of the line and able to assure that ade-

<sup>1</sup>Gross ton-miles are calculated by adding the ton-miles of the cargo and the ton-miles related to the tare (empty) weight of the freight cars used to transport the cargo in the loaded movement. In calculating the gross ton-miles, only those related to the portion of the segment purchased shall be included.

#### 49 CFR Ch. X (10–1–15 Edition)

quate transportation will be provided over the line for at least 3 years;

(2) The applicant is not a class I or class II railroad or an entity affiliated with a class I or class II railroad.

(b) If the Board finds that one or more applicants are financially responsible parties, it shall determine whether the involved line or line segment is a qualified line. A line is a qualified line if:

- (1) Either

- (i) The public convenience and necessity require or permit the sale of line or line segment; or

- (ii) The line or line segment is classified in category 1 or 2 of the owning carrier's system diagram map; and

- (2) The traffic level on the line or line segment sought to be acquired was less than 3 million gross ton-miles of traffic per mile in the preceding calendar year (Note: This finding will not be required for applications filed after October 1, 1983).

(c) If the Board finds that one or more financially responsible parties have offered to buy a qualifying line of railroad, the Board shall set the acquisition cost of the line at the higher of NLV or GCV, order the owning carrier to sell the rail line to one of the financially responsible applicants, and resolve any related issues raised in the application. If an applicant and the owning railroad agree on an acquisition price, that price shall be the final price.

(d) If trackage rights are sought in the application, the Board shall, based on the evidence of record, set the adequate compensation for such rights, if the parties have not agreed.

(e) If the applicant requests the Board to set joint rates or divisions and the line carried less than 3 million gross ton-miles of traffic per mile during the preceding calendar year, the Board shall, pursuant to 49 U.S.C. 10705(a), establish joint rates and divisions based on the evidence of record in the proceeding. Unless specifically requested to do so by the selling carrier, the Board will not set the rate for the selling railroad's share of the joint rate at less than the applicable level (for the year in which the acquisition is made) set by 49 U.S.C. 10709(d)(2), which

## Surface Transportation Board, DOT

## § 1152.2

limits Board maximum ratemaking jurisdiction to rates above certain cost/price ratios.

### **PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903**

#### **Subpart A—General**

Sec.

1152.1 Purpose and scope.

1152.2 Definitions.

#### **Subpart B—System Diagram**

1152.10 System diagram map.

1152.11 Description of lines to accompany the system diagram map or information to be contained in the narrative.

1152.12 Filing and publication.

1152.13 Amendment of the system diagram map or narrative.

1152.14 Availability of data.

1152.15 Reservation of jurisdiction.

#### **Subpart C—Procedures Governing Notice, Applications, Financial Assistance, Acquisition for Public Use, and Trail Use**

1152.20 Notice of intent to abandon or discontinue service.

1152.21 Form of notice.

1152.22 Contents of application.

1152.23 [Reserved]

1152.24 Filing and service of application.

1152.25 Participation in abandonment or discontinuance proceedings.

1152.26 Board determination under 49 U.S.C. 10903.

1152.27 Financial assistance procedures.

1152.28 Public use procedures.

1152.29 Prospective use of rights-of-way for interim trail use and rail banking.

#### **Subpart D—Standards for Determining Costs, Revenues, and Return on Value**

1152.30 General.

1152.31 Revenue and income attributable to branch lines.

1152.32 Calculation of avoidable costs.

1152.33 Apportionment rules for the assignment of expenses to on-branch costs.

1152.34 Return on investment.

1152.35 [Reserved]

1152.36 Submission of revenue and cost data.

1152.37 Financial status reports.

#### **Subpart E [Reserved]**

#### **Subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights**

1152.50 Exempt abandonments and discontinuances of service and trackage rights.

#### **Subpart G—Special Rules Applicable to Petitions for Abandonments or Discontinuances of Service or Trackage Rights Filed Under the 49 U.S.C. 10502 Exemption Procedure**

1152.60 Special rules.

AUTHORITY: 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903–10905, and 11161.

SOURCE: 61 FR 67883, Dec. 24, 1996, unless otherwise noted.

#### **Subpart A—General**

##### **§ 1152.1 Purpose and scope.**

(a) 49 U.S.C. 10903 *et seq.* governs abandonment of rail lines and discontinuance of rail service by common carriers. Section 10903(d) provides that no line of railroad may be abandoned and no rail service discontinued unless the Board finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance.

(b) Part 1152 contains regulations governing abandonment of, and discontinuance of service over, rail lines. This part also sets forth procedures for providing financial assistance to assure continued rail freight service under 49 U.S.C. 10904, for acquiring rail lines for alternate public use under 49 U.S.C. 10905, and for acquiring or using a rail right-of-way for interim trail use and rail banking.

##### **§ 1152.2 Definitions.**

Unless otherwise provided in the text of the regulations, the following definitions apply in this part:

(a) *Account* means an account in the Board's Uniform System of Accounts for Railroad Companies (49 CFR part 1201).